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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Bjornerud *et al.*
Application No. : 10/018,026
Filing Date : June 11, 2002
Art Unit : 3736
Title : Method of Magnetic Resonance Imaging
Examiner : Ruth S. Smith
Docket No. : NIDN-10403

Mail Stop Reply Brief – Patents
Commissioner for Patents
PO Box 1450
Alexandria VA 22313-1450

REPLY BRIEF

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LORI MAIRE
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Date April 25, 2006

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I. STATUS OF CLAIMS

Claims 24-33 are pending in this application. The Examiner has rejected all of these claims. Appellants are appealing the rejections of Claims 24-33.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issue for review in this appeal arises from an Examiner's Answer that was mailed on January 30, 2006.

The Examiner rejected claims 24 and 30-33 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,381,486 ("Mistretta") in view of an article by Stark entitled "Magnetic Resonance Imaging" ("Stark"). This rejection is respectfully traversed.

The Examiner also rejected claims 25-27 under 35 U.S.C. § 103 (a) as being unpatentable over Mistretta in view of Stark and further in view of U.S. Patent No. 5,128,121 ("Berg"). This rejection is respectfully traversed.

In addition, the Examiner rejected claim 28 under 35 U.S.C. § 103 (a) as being unpatentable over Mistretta in view of Stark and further in view of U.S. Patent No. 6,411,837 ("Fischer"). This rejection is respectfully traversed.

Furthermore, the Examiner also rejected claim 29 under 35 U.S.C. § 103 (a) as being unpatentable over Mistretta in view of Stark and further in view of U.S. Publication No. 2004/0208827 ("McMurray"). This rejection is respectfully traversed

III. ARGUMENT

Appellants respectfully request that The Board of Patent Appeals and Interferences (“Board”) should reverse the Examiner’s rejection based on the Examiner’s Answer (“Answer”) dated January 30, 2006 for the reasons set forth below.

In the Examiner’s Response to Appellants Argument found at the bottom of page 4 of the Examiner Answer (“Answer”) dated January 30, 2006, the Examiner states that “in reading Mistretta et al. in its entirety, one skilled in the art would have recognized that Mistretta et al. disclose that it is known to use X-ray imaging methods to provide images showing the circulation of blood in the arteries and veins of the kidneys and that the drawbacks of using such a method can be overcome by using magnetic resonance angiography instead of X-ray to provide a diagnostic study of the vasculature in the kidney”. Appellants completely disagree. U.S. Patent No. 6,381,486 (“Mistretta”) does not disclose, teach, or suggest imaging the kidneys vasculature by magnetic resonance angiography (“MRA”). Mistretta only states that diagnostic studies of the human vasculature by X-ray imaging methods show circulation of blood in the arteries and veins of the kidneys (col. 1, lines 16-20 of Mistretta).

Furthermore, it is important to point out that Mistretta does not even teach, disclose, or suggest using a MRA to image a kidney in a vascularized human or nonhuman body derived from imaging values indicative of one of renal perfusion and renal artery stenosis grade which are both essential elements of the present invention. That is Mistretta as a whole is concerned with the physical structure of the blood vessels and does not suggest or teach towards acquiring renal perfusion information and renal artery stenosis grade of the kidney. Additionally, the

method of Mistretta provides only a MRA image of the vasculature while in the present invention the degree of contrast is used as a measure of how much blood is present in the kidney. Accordingly, the method of Mistretta identifies arteries, veins, and unenhanced background tissue and not the grade of perfusion and stenosis of the kidney as disclosed by the present invention.

In accordance with the aforementioned, Appellants respectfully submit that [i]t is impermissible within the framework of 35 U.S.C. §103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443 (Fed. Cir. 1986). (emphasis added). Something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1051 (Fed. Cir. 1988). (emphasis added). The initial inquiry should be directed to the vantage point of attacking the problem solved by the invention at the time the invention was made. When prior art itself does not suggest or render ‘obvious’ the claimed solution to that problem, the art involved does not satisfy the criteria of 35 U.S.C. §103 for precluding patentability. *Lindemann Maschinenfabrik GmbH v. AMercan Hoist and Derrick Co.*, 730 F.2d 1452 (Fed. Cir. 1984).

Additionally, Appellants wish to point out that by teaching positively towards certain embodiments or features being important or preferred, the prior art must provide a motivation for the person skilled in the art to go in a particular direction. If that direction leads

towards subject matter outside the scope of the claims at issue, then it constitutes a “teaching away”. Appellants maintain that the person skilled in the art, even if assumed to be contemplating improvement of Mistretta, would focus on the teachings in Mistretta of embodiments taught to be important, and be motivated to improve those elements. In Mistretta these elements are clearly the improvement of imaging the physical structure of the blood vessels i.e. blood vessel anatomy/vaculature, which is described at length throughout the specification. Again, Mistretta does not even discuss, teach, or suggest acquiring renal perfusion information from magnetic resonance images nor does Mistretta disclose, teach, or suggest using a contrast enhanced magnetic resonance image to measure how much blood is present in the kidney.

In view of the aforementioned, Appellants respectfully submit that they did indeed review Mistretta as a whole in determining the scope of the disclosed invention as otherwise suggested by the Examiner.

Appellants respectfully request that the Board reverse the Examiner’s rejection of claims 24-33 and direct that claims 24-33 be allowed.

IV. CONCLUSION

In view of the foregoing, Appellants respectfully request that the Board reverse the rejections of Claims 24-33 as set forth in the Office Action mailed January 30, 2006, that the Board allow the pending claims since they are in condition for allowance, and that the Board grant any other relief as it deems proper.

Dated: April 25, 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Craig M. Bohlken', is written over a horizontal line.

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